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OFFICE OF PETITIONS

In re Application of :
Keddie et al. :
Application No. 09/713,994 : **ON PETITION**
Filed: 16 November, 2000 :
Atty Docket No. MBI-0022 :

This is a decision on the petition under 37 CFR 1.137(a),¹ filed on 7 October, 2004 and supplemented on 26 January, 2005, which is first treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition is **GRANTED**.

The application was filed on 16 November, 2000. On 30 July, 2002, a non-final Office action was mailed, setting forth a three (3) month period for reply. In response, on 30 December, 2002, petitioners filed a two (2) month extension of time and an amendment. On 31 March, 2003, an interview was held, and applicants were given one (1) month to submit a copy of the

¹A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(1);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Sequence Listing in CRF. On 21 April, 2003, petitioners filed a reply. On 10 June, 2003, a Notice to Comply was mailed, accompanied by a copy of the Interview Summary, stating that petitioners had not complied with the Sequence Listing requirements set forth in 37 CFR 1.821-1.825, and that an initial or substitute CFR and paper copy of the Sequence Listing was required, along with a statement that the paper and computer readable copies were the same and, where applicable, include no new matter. No reply having been received, the application was held abandoned 1 May, 2003, for failure to file a proper and timely reply to the examiner's interview held 31 March, 2003. Notice of Abandonment was mailed on 13 April, 2004.

Petitioner asserts that the Interview Summary and Notice to Comply mailed on 10 June, 2003, were never received because they were not mailed to the correct address. In support, petitioners provided a copy of a Revocation and Power of Attorney and statement under 37 CFR 3.73(b) changing the correspondence address, and a return receipt postcard itemizing the filing thereof bearing an Office-date stamp of 13 August, 2002. The Revocation of Power of Attorney and Change of Correspondence Address further contains a certificate of mailing dated 5 August, 2002.

In view of the evidence provided, the evidence is convincing that a change of correspondence address and power of attorney were filed on 13 August, 2002, and that the Office correspondence mailed on 10 June, 2003, were not mailed to petitioners' current address due to Office error.

In accordance with the above finding, the holding of abandonment is withdrawn, and the Notice of Abandonment mailed on 13 April, 2004, is vacated.

The petition fee will be credited to counsel's deposit account, No. 50-1025, as authorized in the present petition.

The application is being referred to Technology Center Art Unit 1638 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in cursive script, appearing to read "D. Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions